

4983

2015-2016 Regular Sessions

I N S E N A T E

April 27, 2015

Introduced by Sen. ORTT -- (at request of the Office for People with Developmental Disabilities) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the surrogate's court procedure act, in relation to guardianship and health care decisions of persons with developmental disabilities; and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 1750 of the surrogate's court procedure act, as
2 amended by chapter 500 of the laws of 2002, is amended to read as
3 follows:
4 S 1750. Guardianship of [mentally retarded] persons WITH DEVELOPMENTAL
5 DISABILITIES
6 1. When it shall appear to the satisfaction of the court that a person
7 is a [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY WITHIN
8 THE MEANING OF SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL
9 HYGIENE LAW AND THAT SUCH PERSON, AS A RESULT OF SUCH DEVELOPMENTAL
10 DISABILITY, EXHIBITS SIGNIFICANT IMPAIRMENT OF GENERAL OR SPECIFIC AREAS
11 OF INTELLECTUAL FUNCTIONING AND/OR ADAPTIVE BEHAVIORS IN SPECIFIED
12 DOMAINS AS ENUMERATED IN SUBDIVISION EIGHT OF SECTION SEVENTEEN HUNDRED
13 FIFTY-TWO OF THIS ARTICLE, the court is authorized to appoint a guardian
14 of the person or of the property or of both if such appointment of a
15 guardian or guardians is in the best interest of the [mentally retarded]
16 person WITH A DEVELOPMENTAL DISABILITY. Such appointment shall be made
17 pursuant to the provisions of this article[, provided however that the
18 provisions of section seventeen hundred fifty-a of this article shall
19 not apply to the appointment of a guardian or guardians of a mentally
20 retarded person].
21 [1. For the purposes of this article, a mentally retarded person is a
22 person who has been certified by one licensed physician and one licensed

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 psychologist, or by two licensed physicians at least one of whom is
2 familiar with or has professional knowledge in the care and treatment of
3 persons with mental retardation, having qualifications to make such
4 certification, as being incapable to manage him or herself and/or his or
5 her affairs by reason of mental retardation and that such condition is
6 permanent in nature or likely to continue indefinitely.]

7 2. EVERY GUARDIANSHIP ENTERED INTO PURSUANT TO THIS ARTICLE PRIOR TO
8 THE EFFECTIVE DATE OF THIS SUBDIVISION, INCLUDING ORDERS AND DECREES
9 PURSUANT TO SECTION SEVENTEEN HUNDRED FIFTY-SEVEN OF THIS ARTICLE, SHALL
10 REMAIN IN FULL FORCE AND EFFECT THEREAFTER, EXCEPT AS AMENDED PURSUANT
11 TO SECTION SEVENTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE OR AS ORDERED BY
12 THE COURT; AND ANY SUCH GUARDIANSHIP SHALL BE ADMINISTERED CONSISTENT
13 WITH THE SUBSTANTIVE AND PROCEDURAL REQUIREMENTS SET FORTH IN THIS ARTI-
14 CLE.

15 [2.] 3. Every [such certification pursuant to subdivision one of this
16 section,] ORDER AND DECREE made on or after the effective date of this
17 subdivision, shall include a specific determination by [such physician
18 and psychologist, or by such physicians,] THE ISSUING COURT as to wheth-
19 er the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY has
20 the capacity to make health care decisions, as defined by subdivision
21 three of section twenty-nine hundred eighty of the public health law,
22 for himself or herself. A determination that the [mentally retarded]
23 person WITH A DEVELOPMENTAL DISABILITY has the capacity to make health
24 care decisions shall not preclude the appointment of a guardian pursuant
25 to this section to make other decisions on behalf of the [mentally
26 retarded] person WITH A DEVELOPMENTAL DISABILITY. The absence of this
27 determination in the case of guardians appointed prior to [the effective
28 date of this subdivision] MARCH 16, 2003, shall not preclude such guard-
29 ians from making health care decisions. FURTHER, GUARDIANS APPOINTED BY
30 ORDERS AND/OR DECREES ISSUED PRIOR TO THE EFFECTIVE DATE OF THIS SUBDI-
31 VISION SHALL HAVE AUTHORITY IN ALL AREAS, UNLESS OTHERWISE STATED.

32 S 2. Section 1750-a of the surrogate's court procedure act is
33 REPEALED.

34 S 3. Section 1750-b of the surrogate's court procedure act, as added
35 by chapter 500 of the laws of 2002, subdivision 1 as amended by chapter
36 105 of the laws of 2007, the opening paragraph, paragraphs (a) and (b)
37 of subdivision 1 and the opening paragraph of subdivision 4 as amended
38 by chapter 8 of the laws of 2010, subparagraph (i) of paragraph (a) and
39 clause A of subparagraph (i) of paragraph (e) of subdivision 4 as
40 amended by section 18 of part J of chapter 56 of the laws of 2012, and
41 paragraph (d) of subdivision 5 as added by chapter 262 of the laws of
42 2008, is amended to read as follows:

43 S 1750-b. Health care decisions for [mentally retarded] persons WITH
44 DEVELOPMENTAL DISABILITIES

45 1. Scope of authority. AS USED IN THIS SECTION, THE TERM "DEVELOP-
46 MENTAL DISABILITY" IS AS DEFINED BY SUBDIVISION TWENTY-TWO OF SECTION
47 1.03 OF THE MENTAL HYGIENE LAW. Unless specifically prohibited by the
48 court after consideration of [the determination, if any, regarding a
49 mentally retarded person's] A PERSON WITH A DEVELOPMENTAL DISABILITY'S
50 capacity to make health care decisions, which is required by section
51 seventeen hundred fifty of this article, the guardian of such person
52 appointed pursuant to section seventeen hundred fifty of this article
53 shall have the authority to make any and all health care decisions, as
54 defined by subdivision six of section twenty-nine hundred eighty of the
55 public health law, on behalf of the [mentally retarded] person WITH A
56 DEVELOPMENTAL DISABILITY that such person could make if such person had

1 capacity. Such decisions may include decisions to withhold or withdraw
2 life-sustaining treatment. For purposes of this section, "life-sustain-
3 ing treatment" means medical treatment, including cardiopulmonary resus-
4 citation and nutrition and hydration provided by means of medical treat-
5 ment, which is sustaining life functions and without which, according to
6 reasonable medical judgment, the patient will die within a relatively
7 short time period. Cardiopulmonary resuscitation is presumed to be life-
8 sustaining treatment without the necessity of a medical judgment by an
9 attending physician. The provisions of this article are not intended to
10 permit or promote suicide, assisted suicide or euthanasia; accordingly,
11 nothing in this section shall be construed to permit a guardian to
12 consent to any act or omission to which the [mentally retarded] person
13 WITH A DEVELOPMENTAL DISABILITY could not consent if such person had
14 capacity.

15 (a) For the purposes of making a decision to withhold or withdraw
16 life-sustaining treatment pursuant to this section, in the case of a
17 person for whom no guardian has been appointed pursuant to section
18 seventeen hundred fifty [or seventeen hundred fifty-a] of this article,
19 a "guardian" shall also mean a family member of a person who [(i) has
20 mental retardation, or (ii)] has a developmental disability, as defined
21 in SUBDIVISION TWENTY-TWO OF section 1.03 of the mental hygiene law,
22 [which (A) includes mental retardation, or (B) results in a similar
23 impairment of general intellectual functioning or adaptive behavior so
24 that such person is incapable of managing himself or herself, and/or his
25 or her affairs by reason of such developmental disability] AND THAT SUCH
26 PERSON, AS A RESULT OF SUCH DEVELOPMENTAL DISABILITY, EXHIBITS SIGNIF-
27 ICANT IMPAIRMENT OF GENERAL OR SPECIFIC AREAS OF INTELLECTUAL FUNCTION-
28 ING AND/OR ADAPTIVE BEHAVIORS IN SPECIFIED DOMAINS AS ENUMERATED IN
29 SUBDIVISION EIGHT OF SECTION SEVENTEEN HUNDRED FIFTY-TWO OF THIS
30 ARTICLE. Qualified family members shall be included in a prioritized
31 list of said family members pursuant to regulations established by the
32 commissioner of [mental retardation and] developmental disabilities.
33 Such family members must have a significant and ongoing involvement in a
34 person's life so as to have sufficient knowledge of their needs and,
35 when reasonably known or ascertainable, the person's wishes, including
36 moral and religious beliefs. In the case of a person who was a resident
37 of the former Willowbrook state school on March seventeenth, nineteen
38 hundred seventy-two and those individuals who were in community care
39 status on that date and subsequently returned to Willowbrook or a
40 related facility, who are fully represented by the consumer advisory
41 board and who have no guardians appointed pursuant to this article or
42 have no qualified family members to make such a decision, then a "guard-
43 ian" shall also mean the Willowbrook consumer advisory board. A decision
44 of such family member or the Willowbrook consumer advisory board to
45 withhold or withdraw life-sustaining treatment shall be subject to all
46 of the protections, procedures and safeguards which apply to the deci-
47 sion of a guardian to withhold or withdraw life-sustaining treatment
48 pursuant to this section.

49 In the case of a person for whom no guardian has been appointed pursu-
50 ant to this article or for whom there is no qualified family member or
51 the Willowbrook consumer advisory board available to make such a deci-
52 sion, a "guardian" shall also mean, notwithstanding the definitions in
53 section 80.03 of the mental hygiene law, a surrogate decision-making
54 committee, as defined in article eighty of the mental hygiene law. All
55 declarations and procedures, including expedited procedures, to comply
56 with this section shall be established by regulations promulgated by the

1 [commission on quality of care and advocacy for persons with disabili-
2 ties] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, AS
3 ESTABLISHED BY ARTICLE TWENTY OF THE EXECUTIVE LAW.

4 (b) Regulations establishing the prioritized list of qualified family
5 members required by paragraph (a) of this subdivision shall be developed
6 by the commissioner of [mental retardation and] developmental disabili-
7 ties in conjunction with parents, advocates and family members of
8 persons [who are mentally retarded] WITH DEVELOPMENTAL DISABILITIES.
9 Regulations to implement the authority of the Willowbrook consumer advi-
10 sory board pursuant to paragraph (a) of this subdivision may be promul-
11 gated by the commissioner of the office of [mental retardation and]
12 developmental disabilities with advice from the Willowbrook consumer
13 advisory board.

14 (c) Notwithstanding any provision of law to the contrary, the formal
15 determinations required pursuant to section seventeen hundred fifty of
16 this article shall only apply to guardians appointed pursuant to section
17 seventeen hundred fifty [or seventeen hundred fifty-a] of this article.

18 2. Decision-making standard. (a) The guardian shall base all advocacy
19 and health care decision-making solely and exclusively on the best
20 interests of the [mentally retarded] person WITH A DEVELOPMENTAL DISA-
21 BILITY and, when reasonably known or ascertainable with reasonable dili-
22 gence, on [the mentally retarded] SUCH person's wishes, including moral
23 and religious beliefs.

24 (b) An assessment of the [mentally retarded person's] PERSON WITH A
25 DEVELOPMENTAL DISABILITY'S best interests shall include consideration
26 of:

27 (i) the dignity and uniqueness of every person;

28 (ii) the preservation, improvement or restoration of the [mentally
29 retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S health;

30 (iii) the relief of the [mentally retarded person's] PERSON WITH A
31 DEVELOPMENTAL DISABILITY'S suffering by means of palliative care and
32 pain management;

33 (iv) the unique nature of [artificially provided] nutrition or
34 hydration PROVIDED BY MEANS OF MEDICAL TREATMENT, and the effect it may
35 have on the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY;
36 and

37 (v) the entire medical condition of the person.

38 (c) No health care decision shall be influenced in any way by:

39 (i) a presumption that persons with [mental retardation] DEVELOPMENTAL
40 DISABILITIES are not entitled to the full and equal rights, equal
41 protection, respect, medical care and dignity afforded to persons with-
42 out [mental retardation or] developmental disabilities; or

43 (ii) financial considerations of the guardian, as such considerations
44 affect the guardian, a health care provider or any other party.

45 3. Right to receive information. Subject to the provisions of sections
46 33.13 and 33.16 of the mental hygiene law, the guardian shall have the
47 right to receive all medical information and medical and clinical
48 records necessary to make informed decisions regarding the [mentally
49 retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S health care.

50 4. Life-sustaining treatment. The guardian shall have the affirmative
51 obligation to advocate for the full and efficacious provision of health
52 care, including life-sustaining treatment. In the event that a guardian
53 makes a decision to withdraw or withhold life-sustaining treatment from
54 a [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY:

55 (a) The attending physician, as defined in subdivision two of section
56 twenty-nine hundred eighty of the public health law, must confirm to a

1 reasonable degree of medical certainty that the [mentally retarded]
2 person WITH A DEVELOPMENTAL DISABILITY lacks capacity to make health
3 care decisions. The determination thereof shall be included in the
4 [mentally retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S
5 medical record, and shall contain such attending physician's opinion
6 regarding the cause and nature of the [mentally retarded] person's inca-
7 pacity as well as its extent and probable duration. The attending physi-
8 cian who makes the confirmation shall consult with another physician, or
9 a [licensed] psychologist, to further confirm the [mentally retarded]
10 person's lack of capacity. The attending physician who makes the confir-
11 mation, or the physician or licensed psychologist with whom the attend-
12 ing physician consults, must (i) be employed by a developmental disabili-
13 ties services office named in section 13.17 of the mental hygiene law
14 or employed by the office for people with developmental disabilities to
15 provide treatment and care to people with developmental disabilities, or
16 (ii) have been employed for a minimum of two years to render care and
17 service in a facility or program operated, licensed or authorized by the
18 office [of mental retardation and] FOR PEOPLE WITH developmental disa-
19 bilities, or
20 (iii) have been approved by the commissioner of [mental retardation
21 and] developmental disabilities in accordance with regulations promul-
22 gated by such commissioner. Such regulations shall require that a physi-
23 cian or licensed psychologist possess specialized training or three
24 years experience in treating [mental retardation] PEOPLE WITH DEVELOP-
25 MENTAL DISABILITIES. A record of such consultation shall be included in
26 the [mentally retarded person's] PERSON WITH A DEVELOPMENTAL DISABILI-
27 TY'S medical record.

28 (b) The attending physician, as defined in subdivision two of section
29 twenty-nine hundred eighty of the public health law, with the concu-
30 rrence of another physician with whom such attending physician shall
31 consult, must determine to a reasonable degree of medical certainty and
32 note on the [mentally retarded person's] PERSON WITH A DEVELOPMENTAL
33 DISABILITY'S chart that:

34 (i) the [mentally retarded] person has a medical condition as follows:
35 A. a terminal condition, as defined in subdivision twenty-three of
36 section twenty-nine hundred sixty-one of the public health law; or
37 B. permanent unconsciousness; or
38 C. a medical condition other than such person's [mental retardation]
39 DEVELOPMENTAL DISABILITY which requires life-sustaining treatment, is
40 irreversible and which will continue indefinitely; and
41 (ii) the life-sustaining treatment would impose an extraordinary
42 burden on such person, in light of:
43 A. such person's medical condition, other than such person's [mental
44 retardation] DEVELOPMENTAL DISABILITY; and
45 B. the expected outcome of the life-sustaining treatment, notwith-
46 standing such person's [mental retardation] DEVELOPMENTAL DISABILITY;
47 and
48 (iii) in the case of a decision to withdraw or withhold artificially
49 provided nutrition or hydration:
50 A. there is no reasonable hope of maintaining life; or
51 B. the artificially provided nutrition or hydration poses an extraor-
52 dinary burden.

53 (c) The guardian shall express a decision to withhold or withdraw
54 life-sustaining treatment either:
55 (i) in writing, dated and signed in the presence of one witness eigh-
56 teen years of age or older who shall sign the decision, and presented to

1 the attending physician, as defined in subdivision two of section twen-
2 ty-nine hundred eighty of the public health law; or

3 (ii) orally, to two persons eighteen years of age or older, at least
4 one of whom is the [mentally retarded person's] PERSON WITH A DEVELOP-
5 MENTAL DISABILITY'S attending physician, as defined in subdivision two
6 of section twenty-nine hundred eighty of the public health law.

7 (d) The attending physician, as defined in subdivision two of section
8 twenty-nine hundred eighty of the public health law, who is provided
9 with the decision of a guardian shall include the decision in the
10 [mentally retarded person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S
11 medical chart, and shall either:

12 (i) promptly issue an order to withhold or withdraw life-sustaining
13 treatment from the [mentally retarded] person, and inform the staff
14 responsible for such person's care, if any, of the order; or

15 (ii) promptly object to such decision, in accordance with subdivision
16 five of this section.

17 (e) At least forty-eight hours prior to the implementation of a deci-
18 sion to withdraw life-sustaining treatment, or at the earliest possible
19 time prior to the implementation of a decision to withhold life-sustain-
20 ing treatment, the attending physician shall notify:

21 (i) the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY,
22 except if the attending physician determines, in writing and in consul-
23 tation with another physician or a licensed psychologist, that, to a
24 reasonable degree of medical certainty, the person would suffer immedi-
25 ate and severe injury from such notification. The attending physician
26 who makes the confirmation, or the physician or licensed psychologist
27 with whom the attending physician consults, shall:

28 A. be employed by a developmental disabilities services office named
29 in section 13.17 of the mental hygiene law or employed by the office for
30 people with developmental disabilities to provide treatment and care to
31 people with developmental disabilities, or

32 B. have been employed for a minimum of two years to render care and
33 service in a facility operated, licensed or authorized by the office [of
34 mental retardation and] FOR PEOPLE WITH developmental disabilities, or

35 C. have been approved by the commissioner of [mental retardation and]
36 developmental disabilities in accordance with regulations promulgated by
37 such commissioner. Such regulations shall require that a physician or
38 licensed psychologist possess specialized training or three years expe-
39 rience in treating mental retardation. A record of such consultation
40 shall be included in the [mentally retarded] person's medical record;

41 (ii) if the person is in or was transferred from a residential facili-
42 ty operated, licensed or authorized by the office [of mental retardation
43 and] FOR PEOPLE WITH developmental disabilities, the chief executive
44 officer of the agency or organization operating such facility and the
45 mental hygiene legal service; and

46 (iii) if the person is not in and was not transferred from such a
47 facility or program, the commissioner of [mental retardation and] devel-
48 opmental disabilities, or his or her designee.

49 5. Objection to health care decision. (a) Suspension. A health care
50 decision made pursuant to subdivision four of this section shall be
51 suspended, pending judicial review, except if the suspension would in
52 reasonable medical judgment be likely to result in the death of the
53 [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY, in the event
54 of an objection to that decision at any time by:

55 (i) the [mentally retarded] person on whose behalf such decision was
56 made; or

1 (ii) a parent or adult sibling who either resides with or has main-
2 tained substantial and continuous contact with the [mentally retarded]
3 person; or

4 (iii) the attending physician, as defined in subdivision two of
5 section twenty-nine hundred eighty of the public health law; or

6 (iv) any other health care practitioner providing services to the
7 [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY, who is
8 licensed pursuant to article one hundred thirty-one, one hundred thir-
9 ty-one-B, one hundred thirty-two, one hundred thirty-three, one hundred
10 thirty-six, one hundred thirty-nine, one hundred forty-one, one hundred
11 forty-three, one hundred forty-four, one hundred fifty-three, one
12 hundred fifty-four, one hundred fifty-six, one hundred fifty-nine or one
13 hundred sixty-four of the education law; or

14 (v) the chief executive officer identified in subparagraph (ii) of
15 paragraph (e) of subdivision four of this section; or

16 (vi) if the person is in or was transferred from a residential facili-
17 ty or program operated, approved or licensed by the office [of mental
18 retardation and] FOR PEOPLE WITH developmental disabilities, the mental
19 hygiene legal service; or

20 (vii) if the person is not in and was not transferred from such a
21 facility or program, the commissioner of [mental retardation and] devel-
22 opmental disabilities, or his or her designee.

23 (b) Form of objection. Such objection shall occur orally or in writ-
24 ing.

25 (c) Notification. In the event of the suspension of a health care
26 decision pursuant to this subdivision, the objecting party shall prompt-
27 ly notify the guardian and the other parties identified in paragraph (a)
28 of this subdivision, and the attending physician shall record such
29 suspension in the [mentally retarded person's] PERSON WITH A DEVELOP-
30 MENTAL DISABILITY'S medical chart.

31 (d) Dispute mediation. In the event of an objection pursuant to this
32 subdivision, at the request of the objecting party or person or entity
33 authorized to act as a guardian under this section, except a surrogate
34 decision making committee established pursuant to article eighty of the
35 mental hygiene law, such objection shall be referred to a dispute medi-
36 ation system, established pursuant to section two thousand nine hundred
37 seventy-two of the public health law or similar entity for mediating
38 disputes in a hospice, such as a patient's advocate's office, hospital
39 chaplain's office or ethics committee, as described in writing and
40 adopted by the governing authority of such hospice, for non-binding
41 mediation. In the event that such dispute cannot be resolved within
42 seventy-two hours or no such mediation entity exists or is reasonably
43 available for mediation of a dispute, the objection shall proceed to
44 judicial review pursuant to this subdivision. The party requesting medi-
45 ation shall provide notification to those parties entitled to notice
46 pursuant to paragraph (a) of this subdivision.

47 6. Special proceeding authorized. The guardian, the attending physi-
48 cian, as defined in subdivision two of section twenty-nine hundred
49 eighty of the public health law, the chief executive officer identified
50 in subparagraph (ii) of paragraph (e) of subdivision four of this
51 section, the mental hygiene legal service (if the person is in or was
52 transferred from a residential facility or program operated, approved or
53 licensed by the office [of mental retardation and] FOR PEOPLE WITH
54 developmental disabilities) or the commissioner of [mental retardation
55 and] developmental disabilities or his or her designee (if the person is
56 not in and was not transferred from such a facility or program) may

1 commence a special proceeding in a court of competent jurisdiction with
2 respect to any dispute arising under this section, including objecting
3 to the withdrawal or withholding of life-sustaining treatment because
4 such withdrawal or withholding is not in accord with the criteria set
5 forth in this section.

6 7. Provider's obligations. (a) A health care provider shall comply
7 with the health care decisions made by a guardian in good faith pursuant
8 to this section, to the same extent as if such decisions had been made
9 by the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY, if
10 such person had capacity.

11 (b) Notwithstanding paragraph (a) of this subdivision, nothing in this
12 section shall be construed to require a private hospital to honor a
13 guardian's health care decision that the hospital would not honor if the
14 decision had been made by the [mentally retarded] person WITH A DEVELOP-
15 MENTAL DISABILITY, if such person had capacity, because the decision is
16 contrary to a formally adopted written policy of the hospital expressly
17 based on religious beliefs or sincerely held moral convictions central
18 to the hospital's operating principles, and the hospital would be
19 permitted by law to refuse to honor the decision if made by such person,
20 provided:

21 (i) the hospital has informed the guardian of such policy prior to or
22 upon admission, if reasonably possible; and

23 (ii) the [mentally retarded] person WITH A DEVELOPMENTAL DISABILITY is
24 transferred promptly to another hospital that is reasonably accessible
25 under the circumstances and is willing to honor the guardian's decision.
26 If the guardian is unable or unwilling to arrange such a transfer, the
27 hospital's refusal to honor the decision of the guardian shall consti-
28 tute an objection pursuant to subdivision five of this section.

29 (c) Notwithstanding paragraph (a) of this subdivision, nothing in this
30 section shall be construed to require an individual health care provider
31 to honor a guardian's health care decision that the individual would not
32 honor if the decision had been made by the [mentally retarded] person
33 WITH A DEVELOPMENTAL DISABILITY, if such person had capacity, because
34 the decision is contrary to the individual's religious beliefs or
35 sincerely held moral convictions, provided the individual health care
36 provider promptly informs the guardian and the facility, if any, of his
37 or her refusal to honor the guardian's decision. In such event, the
38 facility shall promptly transfer responsibility for the [mentally
39 retarded] person WITH A DEVELOPMENTAL DISABILITY to another individual
40 health care provider willing to honor the guardian's decision. The indi-
41 vidual health care provider shall cooperate in facilitating such trans-
42 fer of the patient.

43 (d) Notwithstanding the provisions of any other paragraph of this
44 subdivision, if a guardian directs the provision of life-sustaining
45 treatment, the denial of which in reasonable medical judgment would be
46 likely to result in the death of the [mentally retarded] person WITH A
47 DEVELOPMENTAL DISABILITY, a hospital or individual health care provider
48 that does not wish to provide such treatment shall nonetheless comply
49 with the guardian's decision pending either transfer of the mentally
50 retarded person to a willing hospital or individual health care provid-
51 er, or judicial review.

52 (e) Nothing in this section shall affect or diminish the authority of
53 a surrogate decision-making panel to render decisions regarding major
54 medical treatment pursuant to article eighty of the mental hygiene law.

55 8. Immunity. (a) Provider immunity. No health care provider or employ-
56 ee thereof shall be subjected to criminal or civil liability, or be

1 deemed to have engaged in unprofessional conduct, for honoring reason-
2 ably and in good faith a health care decision by a guardian, or for
3 other actions taken reasonably and in good faith pursuant to this
4 section.

5 (b) Guardian immunity. No guardian shall be subjected to criminal or
6 civil liability for making a health care decision reasonably and in good
7 faith pursuant to this section.

8 S 4. Section 1751 of the surrogate's court procedure act, as added by
9 chapter 675 of the laws of 1989, is amended to read as follows:

10 S 1751. Petition for appointment; by whom made

11 (A) A petition for the appointment of a guardian [of the person or
12 property, or both,] of a [mentally retarded or developmentally disabled]
13 person WITH A DEVELOPMENTAL DISABILITY PURSUANT TO THIS ARTICLE may be
14 made by THE PERSON WITH A DEVELOPMENTAL DISABILITY WHEN SUCH PERSON IS
15 EIGHTEEN YEARS OF AGE OR OLDER, a parent, SPOUSE, SIBLING, ADULT CHILD
16 OR any OTHER interested person eighteen years of age or older on behalf
17 of the [mentally retarded or developmentally disabled] person WITH A
18 DEVELOPMENTAL DISABILITY including a corporation authorized to serve as
19 a guardian as provided for by this article[, or by the mentally retarded
20 or developmentally disabled person when such person is eighteen years of
21 age or older].

22 (B) A PERSON WITH A DEVELOPMENTAL DISABILITY MAY KNOWINGLY AND VOLUN-
23 TARILY CONSENT TO THE APPOINTMENT OF A GUARDIAN PURSUANT TO THIS ARTI-
24 CLE.

25 S 5. The surrogate's court procedure act is amended by adding a new
26 section 1751-a to read as follows:

27 S 1751-A. PETITION FOR APPOINTMENT; WHERE MADE (VENUE)

28 1. A PROCEEDING UNDER THIS ARTICLE SHALL BE BROUGHT IN THE SURROGATE'S
29 COURT WITHIN THE COUNTY IN WHICH THE PERSON WITH A DEVELOPMENTAL DISA-
30 BILITY RESIDES, OR IS PHYSICALLY PRESENT AT THE TIME THE PROCEEDING IS
31 COMMENCED. IF THE PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO BE
32 IN NEED OF A GUARDIAN IS BEING CARED FOR AS A RESIDENT IN A FACILITY,
33 THE RESIDENCE OF THAT PERSON SHALL BE DEEMED TO BE IN THE COUNTY WHERE
34 THE FACILITY IS LOCATED AND THE PROCEEDING SHALL BE BROUGHT IN THAT
35 COUNTY, SUBJECT TO APPLICATION BY AN INTERESTED PARTY FOR A CHANGE IN
36 VENUE TO ANOTHER COUNTY BECAUSE OF THE INCONVENIENCE OF THE PARTIES OR
37 WITNESSES OR THE CONDITION OF THE PERSON ALLEGED TO BE IN NEED OF A
38 GUARDIAN.

39 2. AFTER THE APPOINTMENT OF A GUARDIAN, ANY PROCEEDING TO MODIFY A
40 PRIOR ORDER SHALL BE BROUGHT IN THE SURROGATE'S COURT WHICH GRANTED THE
41 PRIOR ORDER, UNLESS AT THE TIME OF THE APPLICATION TO MODIFY THE ORDER
42 THE PERSON WITH A DEVELOPMENTAL DISABILITY RESIDES ELSEWHERE, IN WHICH
43 CASE THE PROCEEDING SHALL BE BROUGHT IN THE COUNTY WHERE THE PERSON WITH
44 A DEVELOPMENTAL DISABILITY RESIDES, WITHOUT THE NEED FOR A MOTION TO
45 TRANSFER VENUE.

46 S 6. Section 1752 of the surrogate's court procedure act, as added by
47 chapter 675 of the laws of 1989, is amended to read as follows:

48 S 1752. Petition for appointment; contents

49 The petition for the appointment of a guardian shall be filed with the
50 court on forms to be prescribed by the state chief administrator of the
51 courts. Such petition for a guardian of a [mentally retarded or develop-
52 mentally disabled] person WITH A DEVELOPMENTAL DISABILITY shall include,
53 but not be limited to, the following information:

54 1. the full name, date of birth and residence of the [mentally
55 retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISA-
56 BILITY;

1 2. the name, age, address and relationship or interest of the peti-
2 tioner to the [mentally retarded or developmentally disabled] person
3 WITH A DEVELOPMENTAL DISABILITY;

4 3. the names AND ADDRESSES, IF KNOWN, of the father, the mother, ADULT
5 children, adult siblings [if eighteen years of age or older,] AND the
6 spouse [and primary care physician if other than a physician having
7 submitted a certification with the petition, if any,] of the [mentally
8 retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISA-
9 BILITY and whether or not they are living, and if living, their
10 addresses and the names and addresses of the nearest distributees of
11 full age who are domiciliaries, if both parents are dead;

12 4. the name and address of the person [with whom the mentally retarded
13 or developmentally disabled] CARING FOR THE person WITH A DEVELOPMENTAL
14 DISABILITY, OR WITH WHOM THE PERSON WITH A DEVELOPMENTAL DISABILITY
15 resides if other than the parents or spouse;

16 5. THE NAME AND ADDRESS OF ANY PERSON WITH SIGNIFICANT AND ONGOING
17 INVOLVEMENT IN THE LIFE OF THE PERSON WITH A DEVELOPMENTAL DISABILITY SO
18 AS TO HAVE SUFFICIENT KNOWLEDGE OF THEIR NEEDS, IF SUCH PERSONS ARE
19 KNOWN TO THE PETITIONER;

20 6. the name, age, address, education and other qualifications, and
21 consent of the proposed guardian, standby and alternate guardian, if
22 other than the parent, spouse, adult child if eighteen years of age or
23 older or adult sibling if eighteen years of age or older, and if such
24 parent, spouse or adult child be living, why any of them should not be
25 appointed guardian;

26 [6.] 7. the estimated value of real and personal property and the
27 annual income therefrom and any other income including governmental
28 entitlements to which the [mentally retarded or developmentally disa-
29 bled] person WITH A DEVELOPMENTAL DISABILITY is entitled; and

30 [7. any circumstances which the court should consider in determining
31 whether it is in the best interests of the mentally retarded or develop-
32 mentally disabled person not be present at the hearing if conducted.]

33 8. AN ENUMERATION OF THE SPECIFIC DOMAINS IN WHICH THE PERSON WITH A
34 DEVELOPMENTAL DISABILITY IS ALLEGED TO BE IN NEED OF A GUARDIAN OR A
35 STATEMENT THAT FULL GUARDIANSHIP IS SOUGHT. SPECIFIC DOMAINS MAY BE
36 INCLUDED WHICH MAY INCLUDE:

37 (I) CONSENT TO OR REFUSAL TO CONSENT TO HEALTH CARE OR OTHER PROFES-
38 SIONAL CARE;

39 (II) MANAGEMENT OF MONEY OR OTHER INCOME, ASSETS OR PROPERTY;

40 (III) ACCESS TO CONFIDENTIAL AND OTHER SENSITIVE INFORMATION;

41 (IV) CHOICES INVOLVING EDUCATION, TRAINING, EMPLOYMENT, SUPPORTS AND
42 SERVICES;

43 (V) REQUESTING ADVOCACY, LEGAL OR OTHER PROFESSIONAL SERVICES;

44 (VI) CHOICE OF RESIDENCE AND SHARED LIVING ARRANGEMENTS;

45 (VII) CHOICES AS TO SOCIAL AND RECREATIONAL ACTIVITY;

46 (VIII) DECISIONS CONCERNING TRAVEL; AND

47 (IX) APPLICATION FOR GOVERNMENT-SPONSORED OR PRIVATE INSURANCE AND
48 BENEFITS.

49 9. A STATEMENT OF THE ALTERNATIVES TO GUARDIANSHIP CONSIDERED, INCLUD-
50 ING BUT NOT LIMITED TO THE EXECUTION OF A HEALTH CARE PROXY, POWER OF
51 ATTORNEY, REPRESENTATIVE PAYEE, SERVICE COORDINATION, AND/OR OTHER
52 SOCIAL SUPPORT SERVICES, OTHER AVAILABLE SUPPORTED OR SHARED DECISION
53 MAKING, AND SURROGATE DECISION-MAKING COMMITTEE, AND REASONS FOR THE
54 DECLINATION OF SUCH ALTERNATIVES.

55 S 7. Section 1753 of the surrogate's court procedure act, as added by
56 chapter 675 of the laws of 1989, is amended to read as follows:

1 S 1753. Persons to be served AND NOTICED

2 1. Upon [presentation] FILING of the petition, process shall issue
3 to[:

4 (a) the parent or parents, adult children, if the petitioner is other
5 than a parent, adult siblings, if the petitioner is other than a parent,
6 and if the mentally retarded or developmentally disabled person is
7 married, to the spouse, if their residences are known;

8 (b) the person having care and custody of the mentally retarded or
9 developmentally disabled person, or with whom such person resides if
10 other than the parents or spouse; and

11 (c) the mentally retarded or developmentally disabled person if four-
12 teen years of age or older for whom an application has been made in such
13 person's behalf.

14 2. Upon presentation of the petition, notice of such petition shall be
15 served by certified mail to:

16 (a) the adult siblings if the petitioner is a parent, and adult chil-
17 dren if the petitioner is a parent;

18 (b) the mental hygiene legal service in the judicial department where
19 the facility, as defined in subdivision (a) of section 47.01 of the
20 mental hygiene law, is located if the mentally retarded or develop-
21 mentally disabled person resides in such a facility;

22 (c) in all cases, to the director in charge of a facility licensed or
23 operated by an agency of the state of New York, if the mentally retarded
24 or developmentally disabled person resides in such facility;

25 (d) one other person if designated in writing by the mentally retarded
26 or developmentally disabled person; and

27 (e) such other persons as the court may deem proper.] THE PERSON WITH
28 A DEVELOPMENTAL DISABILITY, IF PETITIONER IS OTHER THAN THE PERSON WITH
29 A DEVELOPMENTAL DISABILITY ALLEGED TO BE IN NEED OF A GUARDIAN.

30 2. UPON FILING OF THE PETITION, NOTICE OF THE PETITION SHALL BE SENT
31 BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO THE LAST KNOWN ADDRESS OF
32 THE:

33 (A) PARENTS, SPOUSE, ADULT CHILDREN, AND ADULT SIBLINGS OF THE PERSON
34 ALLEGED TO BE IN NEED OF THE GUARDIAN;

35 (B) INDIVIDUALS LISTED IN THE PETITION PURSUANT TO SECTION SEVENTEEN
36 HUNDRED FIFTY-TWO OF THIS ARTICLE AND SUBDIVISIONS FOUR AND FIVE OF THIS
37 SECTION;

38 (C) MENTAL HYGIENE LEGAL SERVICE IN THE JUDICIAL DEPARTMENT WHERE THE
39 PERSON WITH A DEVELOPMENTAL DISABILITY RESIDES;

40 (D) THE DIRECTOR IN CHARGE OF A FACILITY LICENSED OR OPERATED BY AN
41 AGENCY OF THE STATE OF NEW YORK, IF THE PERSON WITH A DEVELOPMENTAL
42 DISABILITY RESIDES IN SUCH FACILITY;

43 (E) ANY OTHER PERSON IF DESIGNATED IN WRITING BY THE PERSON WITH A
44 DEVELOPMENTAL DISABILITY; AND

45 (F) SUCH OTHER PERSONS AS THE COURT MAY DEEM PROPER.

46 3. WITHIN FIVE DAYS OF THE FILING OF THE PETITION, A FULL COPY OF SAID
47 PETITION SHALL BE SERVED BY CERTIFIED MAIL TO THE MENTAL HYGIENE LEGAL
48 SERVICE IN THE JUDICIAL DEPARTMENT IN WHICH THE PETITION WAS FILED. A
49 COPY OF PROOF OF MAILING SHALL BE THEREAFTER FILED WITH THE COURT.

50 4. FOR PETITIONS TO MODIFY AN EXISTING GUARDIANSHIP PURSUANT TO
51 SECTION SEVENTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE AND/OR TO APPOINT A
52 STANDBY GUARDIAN PURSUANT TO SUBDIVISION SEVENTEEN HUNDRED FIFTY-SEVEN
53 OF THIS ARTICLE, WRITTEN NOTICE MUST BE GIVEN TO ALL STANDBY GUARDIANS
54 CURRENTLY IN SUCCESSION FOR A PERSON WITH A DEVELOPMENTAL DISABILITY WHO
55 IS THE SUBJECT OF THE PETITION.

1 5. No process or notice shall be necessary to [a parent, adult child,
2 adult sibling, or spouse of the mentally retarded or developmentally
3 disabled person who has been declared by a court as being incompetent.
4 In addition, no process or notice shall be necessary to a spouse who is
5 divorced from the mentally retarded or developmentally disabled person,
6 and to a parent, adult child, adult sibling when it shall appear to the
7 satisfaction of the court that such person or persons have abandoned the
8 mentally retarded or developmentally disabled person] ANY INDIVIDUAL WHO
9 CANNOT, AFTER DUE DILIGENCE, REASONABLY BE LOCATED. THE PETITIONER SHALL
10 SUBMIT AN AFFIDAVIT TO SUCH EFFECT.

11 S 8. Section 1754 of the surrogate's court procedure act, as added by
12 chapter 675 of the laws of 1989, is amended to read as follows:

13 S 1754. [Hearing and trial] PROCEEDINGS UPON PETITION

14 1. Upon a petition for the appointment of a guardian of a [mentally
15 retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISA-
16 BILITY eighteen years of age or older, the court shall [conduct a hear-
17 ing at which such person shall have the right to jury trial. The right
18 to a jury trial shall be deemed waived by failure to make a demand
19 therefor. The court may in its discretion dispense with a hearing for
20 the appointment of a guardian, and may in its discretion appoint a guar-
21 dian ad litem, or the mental hygiene legal service if such person is a
22 resident of a mental hygiene facility as defined in subdivision (a) of
23 section 47.01 of the mental hygiene law, to recommend whether the
24 appointment of a guardian as proposed in the application is in the best
25 interest of the mentally retarded or developmentally disabled person,
26 provided however, that such application has been made by:

27 (a) both parents or the survivor; or
28 (b) one parent and the consent of the other parent; or
29 (c) any interested party and the consent of each parent.], NOT LATER
30 THAN FORTY-FIVE DAYS FOLLOWING THE FILING OF PROOF OF MAILING UPON THE
31 MENTAL HYGIENE LEGAL SERVICE, SCHEDULE AN APPEARANCE IN THE MATTER.

32 (A) THE MENTAL HYGIENE LEGAL SERVICE SHALL ASCERTAIN WHETHER THE
33 PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO NEED A GUARDIAN HAS
34 ANY OBJECTION TO THE RELIEF SOUGHT IN THE PETITION AND WHETHER THE
35 SERVICE IS ABLE TO REPRESENT THE INTERESTS OF THE PERSON IN THE PROCEED-
36 ING.

37 (B) IF THE SERVICE REPORTS THAT THE PERSON WITH A DEVELOPMENTAL DISA-
38 BILITY ALLEGED TO NEED A GUARDIAN OBJECTS TO THE RELIEF SOUGHT IN THE
39 PETITION, THE COURT SHALL APPOINT THE SERVICE AS COUNSEL FOR THE PERSON.
40 IF THE SERVICE IS NOT AVAILABLE TO SERVE AS THE PERSON'S COUNSEL AND THE
41 PERSON DOES NOT OTHERWISE HAVE COUNSEL, THE COURT SHALL APPOINT COUNSEL
42 FOR THE PERSON FROM AMONG ATTORNEYS ELIGIBLE FOR SUCH APPOINTMENT PURSU-
43 ANT TO SECTION THIRTY-FIVE OF THE JUDICIARY LAW.

44 (C) IF THE SERVICE REPORTS THAT THE PERSON WITH A DEVELOPMENTAL DISA-
45 BILITY ALLEGED TO NEED A GUARDIAN DOES NOT OBJECT TO RELIEF SOUGHT IN
46 THE PETITION, THE PERSON'S INTERESTS SHALL CONTINUE TO BE REPRESENTED BY
47 THE SERVICE, IF AVAILABLE, AND THE SERVICE SHALL CONDUCT AN EXAMINATION
48 INTO THE ALLEGATIONS OF FACT CONTAINED IN THE PETITION AND FILE WITH THE
49 COURT AND SERVE NO LATER THAN TEN DAYS PRIOR TO THE APPEARANCE DATE AN
50 ANSWER CONFIRMING OR DENYING THE ALLEGATIONS IN THE PETITION AND REPORT
51 AS TO WHETHER THE SERVICE FINDS GROUNDS TO OBJECT TO THE RELIEF SOUGHT
52 IN THE PETITION. THE SERVICE WILL OTHERWISE PERFORM ITS FUNCTIONS
53 CONSISTENT WITH UNIFORM REGULATIONS PROMULGATED BY THE APPELLATE DIVI-
54 SION OF THE SUPREME COURT.

55 (D) IF A PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO NEED A
56 GUARDIAN WHO DOES NOT OBJECT DOES NOT OTHERWISE APPEAR BY THE SERVICE OR

1 OTHER COUNSEL, THE COURT SHALL APPOINT A GUARDIAN AD LITEM PURSUANT TO
2 THIS SECTION AND SECTION FOUR HUNDRED THREE OF THIS ACT. ANY GUARDIAN AD
3 LITEM APPOINTED PURSUANT TO THIS SECTION SHALL CONDUCT AN INVESTIGATION
4 INTO THE ALLEGATIONS OF FACT CONTAINED IN THE PETITION AND FILE WITH THE
5 COURT AND SERVE NO LATER THAN TEN DAYS PRIOR TO THE APPEARANCE DATE, A
6 REPORT OF ITS FINDINGS CONFIRMING OR DISCONFIRMING SAID ALLEGATIONS, AND
7 IF APPROPRIATE AND UPON CONSENT OF THE PERSON WITH A DEVELOPMENTAL DISA-
8 BILITY NOMINATE A PERSON OR ENTITY OF THE RESPONDENT'S CHOOSING TO SERVE
9 AS GUARDIAN, AS WELL AS ANY OTHER MATTER WHICH COULD ASSIST THE COURT'S
10 CONSIDERATION OF THE MATTER, AND SERVE A COPY OF THE REPORT UPON THE
11 PETITIONER.

12 (E) THE SERVICE, ANY OTHER COUNSEL FOR THE PERSON WITH A DEVELOPMENTAL
13 DISABILITY ALLEGED TO NEED A GUARDIAN, OR THE GUARDIAN AD LITEM MAY
14 APPLY TO THE COURT FOR PERMISSION TO INSPECT THE CLINICAL RECORDS
15 PERTAINING TO THE PERSON WITH A DEVELOPMENTAL DISABILITY ALLEGED TO NEED
16 A GUARDIAN IN ACCORDANCE WITH STATE AND FEDERAL LAWS. THE SERVICE, ANY
17 OTHER COUNSEL FOR THE PERSON WITH A DEVELOPMENTAL DISABILITY AND THE
18 GUARDIAN AD LITEM, IF ANY, SHALL BE AFFORDED ACCESS TO THE PERSON'S
19 CLINICAL RECORDS WITHOUT A COURT ORDER TO THE EXTENT THAT SUCH ACCESS IS
20 OTHERWISE AUTHORIZED BY STATE AND FEDERAL LAWS.

21 (F) THE SERVICE, ANY OTHER COUNSEL FOR THE PERSON WITH A DEVELOPMENTAL
22 DISABILITY ALLEGED TO NEED A GUARDIAN, AND THE GUARDIAN AD LITEM, IF
23 ANY, MAY REQUEST THE COURT FOR FURTHER EVALUATION OF THE PERSON BY A
24 PHYSICIAN, PSYCHIATRIST OR CERTIFIED PSYCHOLOGIST. IN THE EVENT THAT
25 FURTHER EVALUATIONS ARE REQUIRED, THE COURT MAY GRANT APPROPRIATE
26 ADJOURNMENTS OF THE INITIAL APPEARANCE DATE AND MAY DIRECT, IN THE CASE
27 OF A PERSON DETERMINED TO BE INDIGENT, THAT ANY FURTHER COURT AUTHORIZED
28 EVALUATIONS BE PAID FOR OUT OF FUNDS AVAILABLE PURSUANT TO SECTION THIR-
29 TY-FIVE OF THE JUDICIARY LAW.

30 2. [When it shall appear to the satisfaction of the court that a
31 parent or parents not joining in or consenting to the application have
32 abandoned the mentally retarded or developmentally disabled person or
33 are not otherwise required to receive notice, the court may dispense
34 with such parent's consent in determining the need to conduct a hearing
35 for a person under the age of eighteen. However, if the consent of both
36 parents or the surviving parent is dispensed with by the court, a hear-
37 ing shall be held on the application.] AT THE FIRST APPEARANCE, THE
38 RESPONDENT SHALL BE PRESENT UNLESS SUCH PRESENCE IS EXCUSED BY THE COURT
39 UPON RECOMMENDATION OF THE SERVICE, RESPONDENT'S COUNSEL, OR THE GUARDI-
40 AN AD LITEM IF THE RESPONDENT DOES NOT HAVE COUNSEL. THE PETITIONER
41 SHALL ALSO BE PRESENT AND MAY BE REPRESENTED BY COUNSEL. ANY OTHER PARTY
42 REQUIRED TO BE SERVED OR NOTICED WITH PROCESS IN THE MATTER MAY BE PRES-
43 ENT.

44 (A) PRIOR TO SUCH APPEARANCE, THE PETITIONER, EITHER PERSONALLY OR BY
45 COUNSEL, MAY CONFER WITH THE SERVICE, RESPONDENT'S COUNSEL AND THE GUAR-
46 DIAN AD LITEM IF RESPONDENT DOES NOT HAVE COUNSEL AND AGREE TO AMEND ANY
47 PART OF ITS PETITION AND ALLEGATIONS OF FACT THEREIN. ANY SUCH AMENDED
48 PETITION SHALL BE FILED WITH THE COURT PRIOR TO THE DATE OF THE FIRST
49 APPEARANCE.

50 (B) AT THE FIRST APPEARANCE, THE COURT SHALL EXAMINE THE ANSWER OF THE
51 SERVICE, RESPONDENT'S COUNSEL, OR THE REPORT OF THE GUARDIAN AD LITEM,
52 IF ANY, AND MAY HEAR FROM THE PETITIONER AND THE SERVICE, RESPONDENT'S
53 COUNSEL AND THE GUARDIAN AD LITEM, IF ANY, ON THE CONTENTS OF THE SAID
54 ANSWER OR REPORT AND ANY AMENDED PETITION FILED.

55 (C) THE COURT MAY DIRECT THAT AN ORDER AND DECREE OF GUARDIANSHIP
56 ISSUE, INCLUDING THE AUTHORITY OF THE GUARDIAN TO ACT ON BEHALF OF THE

RESPONDENT WITH RESPECT TO ANY MATTER IN WHICH PETITIONER, THE SERVICE, RESPONDENT'S COUNSEL, AND THE GUARDIAN AD LITEM, IF ANY, ALL AGREE ON THE RECORD THAT THE RESPONDENT REQUIRES THE REQUESTED RELIEF AND DOES NOT OBJECT TO SUCH RELIEF.

(D) IN THE EVENT THAT THE PETITION CANNOT BE DISPOSED OF BY THE AGREEMENT OF THE COURT AND ALL OF THE PARTIES, THE COURT SHALL FORTHWITH SCHEDULE A HEARING IN THE MATTER AT WHICH THE RESPONDENT SHALL BE PRESENT UNLESS IT SHALL APPEAR TO THE COURT THAT THE RESPONDENT'S PRESENCE IS MEDICALLY CONTRAINDICATED, IN THAT IT WOULD BE LIKELY TO CAUSE HARM TO THE RESPONDENT, OR UNDER SUCH OTHER CIRCUMSTANCES RAISED BY OR ON BEHALF OF THE RESPONDENT AS THE COURT AGREES THAT THE RESPONDENT'S PRESENCE WOULD NOT BE IN HIS OR HER BEST INTERESTS, PROVIDED HOWEVER THAT THE RESPONDENT'S PRESENCE SHALL NOT BE WAIVED OVER THE OBJECTION OF THE SERVICE, RESPONDENT'S COUNSEL, OR A GUARDIAN AD LITEM, IF ANY, IN WHICH CASE THE COURT SHALL CONDUCT THE HEARING WHERE THE RESPONDENT RESIDES, IF THE COURT IS SATISFIED THAT THE RESPONDENT'S PRESENCE WOULD BE HARMFUL TO THE RESPONDENT.

3. [If a hearing is conducted, the mentally retarded or developmentally disabled person shall be present unless it shall appear to the satisfaction of the court on the certification of the certifying physician that the mentally retarded or developmentally disabled person is medically incapable of being present to the extent that attendance is likely to result in physical harm to such mentally retarded or developmentally disabled person, or under such other circumstances which the court finds would not be in the best interest of the mentally retarded or developmentally disabled person.] IF THERE ARE ANY OBJECTIONS TO THE RELIEF SOUGHT BY THE PETITIONER, THE RESPONDENT HAS A RIGHT TO A HEARING OR JURY TRIAL, IF DEMANDED BY THE RESPONDENT. IN ADDITION, THE COURT MAY CONDUCT A HEARING AT THE REQUEST OF ANY PARTY OR ON ITS OWN MOTION. AT ANY SUCH HEARING OR TRIAL, THE PETITIONER MUST ESTABLISH BY CLEAR AND CONVINCING EVIDENCE ANY FACTS ALLEGED IN THE PETITION OR AMENDED PETITION WHICH ARE CONTROVERTED AND ARE RELEVANT TO WHETHER RESPONDENT HAS A DEVELOPMENTAL DISABILITY, AND IF SO, WHETHER APPOINTMENT OF A GUARDIAN IS REQUIRED AND THE SCOPE OF THE GUARDIAN'S POWERS. ANY OTHER MATTER MUST BE PROVEN BY THE FAIR PREPONDERANCE OF THE EVIDENCE PRESENTED AND ADMITTED.

4. [If either a hearing is dispensed with pursuant to subdivisions one and two of this section or the mentally retarded or developmentally disabled person is not present at the hearing pursuant to subdivision three of this section, the court may appoint a guardian ad litem if no mental hygiene legal service attorney is authorized to act on behalf of the mentally retarded or developmentally disabled person. The guardian ad litem or mental hygiene legal service attorney, if appointed, shall personally interview the mentally retarded or developmentally disabled person and shall submit a written report to the court.

5. If, upon conclusion of such hearing or jury trial or if none be held upon the application, the court is satisfied that the best interests of the mentally retarded or developmentally disabled person will be promoted by the appointment of a guardian of the person or property, or both, it shall make a decree naming such person or persons to serve as such guardians.] IF, UPON CONCLUSION OF SUCH HEARING OR JURY TRIAL, IF ANY, THE COURT IS SATISFIED THAT THE RESPONDENT HAS A DEVELOPMENTAL DISABILITY AND REQUIRES THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR PROPERTY, OR BOTH, IT SHALL MAKE A DECREE NAMING SUCH PERSON OR PERSONS TO SERVE AS SUCH GUARDIANS. THE POWERS OF THE GUARDIAN SHALL BE TAILORED TO THE NEEDS OF THE RESPONDENT.

1 S 9. The surrogate's court procedure act is amended by adding a new
2 section 1754-a to read as follows:

3 S 1754-A. DECISION MAKING STANDARD

4 DECISIONS MADE BY A GUARDIAN ON BEHALF OF A PERSON WITH A DEVELOP-
5 MENTAL DISABILITY SHALL BE MADE IN ACCORDANCE WITH THE FOLLOWING STAND-
6 ARDS.

7 1. A GUARDIAN SHALL EXERCISE AUTHORITY ONLY AS NECESSITATED BY THE
8 PERSON WITH A DEVELOPMENTAL DISABILITY'S LIMITATIONS, AND, TO THE EXTENT
9 POSSIBLE, SHALL ENCOURAGE THE PERSON WITH A DEVELOPMENTAL DISABILITY TO
10 PARTICIPATE IN DECISIONS AND TO ACT ON HIS OR HER OWN BEHALF.

11 2. A GUARDIAN SHALL CONSIDER THE EXPRESSED DESIRES AND PERSONAL VALUES
12 OF THE PERSON WITH A DEVELOPMENTAL DISABILITY TO THE EXTENT KNOWN, WHEN
13 MAKING DECISIONS AND SHALL CONSULT WITH THE PERSON WITH A DEVELOPMENTAL
14 DISABILITY WHENEVER MEANINGFUL COMMUNICATION IS POSSIBLE.

15 3. IF THE PERSON'S WISHES ARE UNKNOWN AND REMAIN UNKNOWN AFTER REASON-
16 ABLE EFFORTS TO DISCERN THEM, THE DECISION SHALL BE MADE ON THE BASIS OF
17 THE BEST INTERESTS OF THE PERSON WITH A DEVELOPMENTAL DISABILITY AS
18 DETERMINED BY THE GUARDIAN. IN DETERMINING THE BEST INTERESTS OF THE
19 PERSON WITH A DEVELOPMENTAL DISABILITY, THE GUARDIAN SHALL WEIGH THE
20 REASON FOR AND NATURE OF THE PROPOSED ACTION; THE BENEFIT OR NECESSITY
21 OF THE ACTION, THE POSSIBLE RISKS AND OTHER CONSEQUENCES OF THE PROPOSED
22 ACTION; AND ANY AVAILABLE ALTERNATIVES AND THEIR RISKS, CONSEQUENCES AND
23 BENEFITS. THE GUARDIAN SHALL TAKE INTO ACCOUNT ANY OTHER INFORMATION,
24 INCLUDING THE VIEWS OF FAMILY AND FRIENDS, THAT THE GUARDIAN BELIEVES
25 THE PERSON WITH A DEVELOPMENTAL DISABILITY WOULD HAVE CONSIDERED IF ABLE
26 TO ACT FOR HERSELF OR HIMSELF.

27 S 10. Section 1755 of the surrogate's court procedure act, as added by
28 chapter 675 of the laws of 1989, is amended to read as follows:

29 S 1755. Modification order

30 Any [mentally retarded or developmentally disabled] person WITH A
31 DEVELOPMENTAL DISABILITY eighteen years of age or older, or any person
32 on behalf of any [mentally retarded or developmentally disabled] person
33 WITH A DEVELOPMENTAL DISABILITY for whom a guardian has been appointed,
34 may apply to the court [having jurisdiction over the guardianship order]
35 PURSUANT TO SECTION 1751-A OF THIS ARTICLE requesting modification of
36 such order in order to protect the [mentally retarded or developmentally
37 disabled person's] PERSON WITH A DEVELOPMENTAL DISABILITY'S financial
38 situation and/or his or her personal interests. The court may, upon
39 receipt of any such request to modify the guardianship order, appoint a
40 guardian ad litem. The court shall so modify the guardianship order if
41 in its judgment the interests of the guardian are adverse to those of
42 the [mentally retarded or developmentally disabled] person WITH A DEVEL-
43 OPMENTAL DISABILITY or if the interests of justice will be best served
44 including, but not limited to, facts showing the necessity for protect-
45 ing the personal and/or financial interests of the [mentally retarded or
46 developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY.

47 S 11. Section 1756 of the surrogate's court procedure act, as added by
48 chapter 675 of the laws of 1989, is amended to read as follows:

49 S 1756. Limited [guardian of the property] PURPOSE AND/OR LIMITED DURA-
50 TION GUARDIANSHIP

51 1. When it shall appear to the satisfaction of the court that such
52 [mentally retarded or developmentally disabled] person WITH A DEVELOP-
53 MENTAL DISABILITY for whom an application for guardianship is made is
54 eighteen years of age or older and is wholly or substantially self-sup-
55 porting by means of his or her wages or earnings from employment, the
56 court is authorized and empowered to appoint a limited guardian of the

1 property of such [mentally retarded or developmentally disabled] person
2 WITH A DEVELOPMENTAL DISABILITY who shall receive, manage, disburse and
3 account for only such property of said [mentally retarded or develop-
4 mentally disabled] person WITH A DEVELOPMENTAL DISABILITY as shall be
5 received from other than the wages or earnings of said person.

6 The [mentally retarded or developmentally disabled] person WITH A
7 DEVELOPMENTAL DISABILITY for whom a limited guardian of the property has
8 been appointed shall have the right to receive and expend any and all
9 wages or other earnings of his or her employment and shall have the
10 power to contract or legally bind himself or herself for such sum of
11 money not exceeding one month's wages or earnings from such employment
12 or three hundred dollars, whichever is greater, or as otherwise author-
13 ized by the court.

14 2. WHEN IT SHALL APPEAR TO THE SATISFACTION OF THE COURT, EITHER UPON
15 A PETITION FOR GUARDIANSHIP FILED AS PERMITTED BY SECTIONS 1751 AND 1752
16 OF THIS ARTICLE OR UPON A PETITION FILED PURSUANT TO THIS SECTION IN A
17 SIMPLIFIED FORMAT TO BE ESTABLISHED BY THE OFFICE OF COURT ADMINIS-
18 TRATION IN CONSULTATION WITH THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL
19 DISABILITIES AND OTHER INTERESTED STAKEHOLDERS, THAT A PERSON WITH A
20 DEVELOPMENTAL DISABILITY NEEDS THE ASSISTANCE OF A GUARDIAN OF THE
21 PERSON AND/OR PROPERTY FOR THE PURPOSE OF MAKING A SINGLE DECISION OR
22 FOR A BRIEF STATED PERIOD OF TRANSITION IN SUCH PERSON'S LIFE, THE COURT
23 MAY APPOINT A LIMITED-PURPOSE GUARDIAN OF THE PERSON AND/OR PROPERTY TO
24 EFFECTUATE SUCH A DECISION OR TRANSITION. IN ANY SUCH CASE, THE
25 PROVISIONS OF SECTION 1754 SHALL APPLY, EXCEPT THAT THE PERIOD FOR THE
26 RENDERING OF A REPORT BY THE MENTAL HYGIENE LEGAL SERVICE OR OTHER
27 RESPONDENT'S COUNSEL MAY BE SHORTENED AS MAY BE REASONABLY NECESSARY TO
28 MEET THE NEEDS OF THE RESPONDENT UNDER THE CIRCUMSTANCES PRESENTED. AN
29 ORDER APPOINTING AND EMPOWERING SUCH A LIMITED-PURPOSE GUARDIAN OF THE
30 PERSON AND/OR PROPERTY SHALL STATE SPECIFICALLY THE DURATION AND SCOPE
31 OF SUCH GUARDIAN'S AUTHORITY.

32 S 12. Section 1757 of the surrogate's court procedure act, as added by
33 chapter 675 of the laws of 1989, the section heading as amended by chap-
34 ter 290 of the laws of 1992, subdivision 2 as amended by chapter 260 of
35 the laws of 2009, subdivision 3 as added by chapter 294 of the laws of
36 2012, is amended to read as follows:

37 S 1757. Standby guardian of a [mentally retarded or developmentally
38 disabled] person WITH A DEVELOPMENTAL DISABILITY

39 1. Upon application, a standby guardian of the person or property or
40 both of a [mentally retarded or developmentally disabled] person WITH A
41 DEVELOPMENTAL DISABILITY may be appointed by the court. ANY SUCH APPLI-
42 CATION SHALL BE MADE UPON NOTICE TO THE MENTAL HYGIENE LEGAL SERVICE.
43 The court may also, upon application, appoint an alternate and/or
44 successive alternates to such standby guardian, to act if such standby
45 guardian shall die, or become incapacitated, or shall renounce. Such
46 appointments by the court shall be made in accordance with the
47 provisions of this article.

48 2. Such standby guardian, or alternate in the event of such standby
49 guardian's death, incapacity or renunciation, shall without further
50 proceedings be empowered to assume the duties of his or her office imme-
51 diately upon death, renunciation or adjudication of incompetency of the
52 guardian or standby guardian appointed pursuant to this article, subject
53 only to THE FILING OF AN APPLICATION FOR confirmation of his or her
54 appointment by the court within one hundred eighty days following
55 assumption of his or her duties of such office. Before confirming the
56 appointment of the standby guardian or alternate guardian, the court may

1 conduct a hearing pursuant to section seventeen hundred fifty-four of
2 this article upon petition by anyone on behalf of the [mentally retarded
3 or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY or
4 the [mentally retarded or developmentally disabled] person WITH A DEVEL-
5 OPMENTAL DISABILITY if such person is eighteen years of age or older, or
6 upon its discretion.

7 3. Failure of a standby or alternate standby guardian to assume the
8 duties of guardian, seek court confirmation or to renounce the guardian-
9 ship within sixty days of written notice by certified mail or personal
10 delivery given by or on behalf of the [mentally retarded or develop-
11 mentally disabled] person WITH A DEVELOPMENTAL DISABILITY of a prior
12 guardian's inability to serve and the standby or alternate standby
13 guardian's duty to serve, seek court confirmation or renounce such role
14 shall allow the court to:

15 (a) deem the failure an implied renunciation of guardianship, and

16 (b) authorize, notwithstanding the time period provided for in subdi-
17 vision two of this section to seek court confirmation, any remaining
18 standby or alternate standby guardian to serve in such capacity provided
19 (i) an application for confirmation and appropriate notices pursuant to
20 subdivision one of section seventeen hundred fifty-three of this article
21 are filed, or (ii) an application for modification of the guardianship
22 order pursuant to section seventeen hundred fifty-five of this article
23 is filed.

24 S 13. Subdivision 2 of section 1758 of the surrogate's court procedure
25 act, as amended by chapter 427 of the laws of 2013, is amended to read
26 as follows:

27 2. After the appointment of a guardian, standby guardian or alternate
28 guardians, the court shall have and retain general jurisdiction over the
29 [mentally retarded or developmentally disabled] person WITH A DEVELOP-
30 MENTAL DISABILITY for whom such guardian shall have been appointed, to
31 take of its own motion or to entertain and adjudicate such steps and
32 proceedings relating to such guardian, standby, or alternate guardian-
33 ship as may be deemed necessary or proper for the welfare of such
34 [mentally retarded or developmentally disabled] person WITH A DEVELOP-
35 MENTAL DISABILITY.

36 S 14. Section 1759 of the surrogate's court procedure act, as added by
37 chapter 675 of the laws of 1989, is amended to read as follows:
38 S 1759. Duration of guardianship

39 1. Such guardianship shall not terminate at the age of majority or
40 marriage of such [mentally retarded or developmentally disabled] person
41 WITH A DEVELOPMENTAL DISABILITY but shall continue during the life of
42 such person, DURING THE PERIOD SPECIFIED IN A LIMITED PURPOSE OR LIMITED
43 DURATION GUARDIANSHIP, or until terminated by the court.

44 2. A person eighteen years or older for whom such a guardian has been
45 previously appointed or anyone, including the guardian, on behalf of a
46 [mentally retarded or developmentally disabled] person WITH A DEVELOP-
47 MENTAL DISABILITY for whom a guardian has been appointed may petition
48 the court which made such appointment or the court in his or her county
49 of residence to have the guardian discharged and a successor appointed,
50 or to have the guardian of the property designated as a limited guardian
51 of the property, or to have the guardianship order modified, dissolved
52 or otherwise amended. Upon such a petition for review, the court shall
53 conduct a hearing pursuant to section seventeen hundred fifty-four of
54 this article.

55 3. Upon marriage of such [mentally retarded or developmentally disa-
56 bled] person WITH A DEVELOPMENTAL DISABILITY for whom such a guardian

has been appointed, the court shall, upon request of the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY, spouse, or any other person acting on behalf of the [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY, review the need, if any, to modify, dissolve or otherwise amend the guardianship order including, but not limited to, the appointment of the spouse as standby guardian. The court, in its discretion, may conduct such review pursuant to section seventeen hundred fifty-four of this article.

S 15. Section 1760 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1760. Corporate guardianship

No corporation may be appointed guardian of the person under the provisions of this article, except that a non-profit corporation organized and existing under the laws of the state of New York and having the corporate power to act as guardian of [mentally retarded or developmentally disabled] persons WITH DEVELOPMENTAL DISABILITIES may be appointed as the guardian of the person only of such [mentally retarded or developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY.

S 16. Section 1761 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1761. Application of other provisions

To the extent that the context thereof shall admit, the provisions of article seventeen of this act shall apply to all proceedings under this article with the same force and [affect] EFFECT as if an "infant", as therein referred to, were a "[mentally retarded" or "developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY" as herein defined, and a "guardian" as therein referred to were a "guardian of the [mentally retarded person" or a "guardian of a developmentally disabled] person WITH A DEVELOPMENTAL DISABILITY" as herein provided for.

S 17. The surrogate's court procedure act is amended by adding a new section 1762 to read as follows:

S 1762. ANNUAL REPORT OF PERSONAL NEEDS GUARDIAN

1. FOR THE PURPOSES OF THIS ARTICLE, THE GUARDIAN OF A PERSON WITH A DEVELOPMENTAL DISABILITY SHALL SUBMIT A REPORT REGARDING THE STATUS OF THE PERSON WITH A DEVELOPMENTAL DISABILITY ANNUALLY ON THE ANNIVERSARY OF HIS OR HER APPOINTMENT OR AT SUCH OTHER INTERVAL AS ORDERED BY THE COURT.

2. THE REPORT SHALL BE ON A FORM PRESCRIBED BY THE OFFICE OF COURT ADMINISTRATION.

3. A CORPORATE GUARDIAN APPOINTED PURSUANT TO SECTION 1760 OF THIS ARTICLE MAY SUBMIT IN LIEU OF THE FORM PRESCRIBED BY THE OFFICE OF COURT ADMINISTRATION IN SUBDIVISION TWO OF THIS SECTION ITS OWN INTERNAL REPORT PROVIDED THE INFORMATION REQUIRED TO BE CONTAINED IN THE REPORT IS INCLUDED IN THE CORPORATE ANNUAL REPORT.

4. THE GUARDIANSHIP REPORT FORM SHALL BE FILED WITH THE COURT AND MAILED TO STANDBY GUARDIANS AND ALTERNATE STANDBY GUARDIANS, AND, WHERE APPLICABLE, THE DIRECTOR OF MENTAL HYGIENE LEGAL SERVICE IN THE DEPARTMENT IN WHICH THE PERSON WITH A DEVELOPMENTAL DISABILITY RESIDES AND THE DIRECTOR OF THE RESIDENCE OF THE PERSON WITH A DEVELOPMENTAL DISABILITY OR THE PERSON WITH WHOM THE PERSON WITH A DEVELOPMENTAL DISABILITY RESIDES.

S 18. This act shall take effect on the one hundred eightieth day after it shall have become a law.